decision of *Buckley* v. *Barber*, 6 Ex. 164, which, acting on the principle that *jus accrescendi inter mercatores locum non habet*, held that as regards chattels belonging to the firm there is no survivorship. This case made a useless and unsound distinction between land, debts, and chattels. It seems never to have been followed in the United States, and in England has been taken care of by statute. It is further interesting to note that the court repudiates the much discussed decision of *Knox* v. *Gye*, L. R. 5 E. & I. 656, that there is no fiduciary relation between the surviving partners and the executor of a deceased partner, and in accord with an earlier Victorian case, *In re Falk*, 18 V. L. R. 589, adopts the dissenting opinion of Lord Hatherley, that the survivors hold the assets as joint-tenants in trust for the firm. While to-day this matter has been said to be largely a question of terminology, it has certainly caused a large amount of confusion in the courts, — many following Lord Westbury, in *Knox* v. *Gye*, *supra*, that there is no fiduciary relation whatever, others holding the relation to be purely that of trustee and cestui, *Hill* v. *Draper*, 54 Ark. 395, while others again say the position of the surviving partners is anomalous, "not exactly and wholly trustee and yet not a full owner of the assets." *Russell* v. *McCall*, 141 N. Y. 437. It may well be doubted, notwithstanding the great authority of Lord Westbury, whether the view of the principal case is not the better; for the relation in its essential attributes would seem to be fiduciary.

LUMPING OF ORDERS BY AN AGENT. — The question whether an agent, having received orders from various principals, can, by joining them and entering into a contract with a third person for the whole amount, bring the third person into contractual relationship with each of the principals, is a question of thoroughly practical application. In the recent case of *Beckhusen and Gibbs* v. *Hamblet*, 16 Times L. R. 278, it was answered in the negative. The defendant had given a broker orders to purchase two hundred and ten shares of stock. Having an order for one hundred and fifty shares of the same stock from another customer, the broker lumped the orders and purchased three hundred and sixty shares from the plaintiffs. The broker failing, the plaintiffs learned from him the names of his principals, and then sued the defendant for loss incurred with regard to his proportion of the stock. The court held that no contractual relationship had been established between the plaintiffs and the defendant, the contract with the plaintiffs being solely with the broker and not with either of his customers.

If the broker had made two separate contracts for the precise number of shares ordered by each customer, each would have been liable to the seller on his own contract, whether the broker disclosed his principals or not. And at first sight it seems odd to say that when the broker does the very common act of lumping the two orders, the person with whom he contracts loses all right to proceed against the customers. Yet on closer examination the decision in the principal case is seen to reach the only logical result. A contrary view would lead to one of the following conclusions: either that the principals had incurred a liability jointly or severally, or jointly and severally; or that a contract exists with each principal for his proportionate share. The first view is on its face untrue, for the principals had no relations with each other. The second is equally untenable, for the contract made by the agent was one entire

contract which cannot be split up. The terms may well have been different because of the size of the contract, and the whole transaction was on the understanding that but a single liability was to be incurred on each side. We must say, then, that the contract was between the third person and the agent only, and that by such a contract it is impossible to make the principals and the third party liable to each other. The principal case is the converse of *Roosevelt* v. *Doherty*, 129 Mass. 301, where the action was brought by one of the principals against the third party. The decision there supports that of the present case, but the question is dealt with by the court as if it were peculiar to the doctrine of undisclosed principal. It is evident, however, that, even had the principal been disclosed, the result must have been the same. As the case under discussion, where the principal was also undisclosed, proceeds on the broader ground, it is particularly valuable.

It is indeed possible to regard a stock broker not as an agent but as an independent buyer and seller. Accordingly the doctrines of agency would not apply, and in no case would the persons from whom and for whom he bought be directly liable to each other. It may well be doubted whether this view, though not recognized by the courts, is not more consonant with business usage.

LIMITATION OF LIABILITY BY A CARRIER. — That a common carrier may not lawfully contract against liability for injuries resulting to passengers from the negligence of its servants is a rule of almost universal application. *Railway Co.* v. *Lockwood*, 17 Wall. 357. Public policy requires such a rule for a twofold reason. Since the carrier has virtually a monopoly, and since the exigencies of business often require a man to get immediate transportation, though it may be at the sacrifice of his legal rights, it has its patrons at such a great disadvantage that it can readily exact from them a stipulation that it shall not be liable for negligence. In the great majority of cases also, the carrier gives nothing in return for this release of its common law obligation, and the agreement is therefore without consideration. Moreover, even though there may be consideration for such a contract, the welfare of the state requires that a common carrier should not be allowed to make any diminution in the care taken to protect its passengers from harm, and it is clear that a general limitation of that sort might readily result in a relaxation of its precautions to prevent accidents.

Whether one who is travelling on a gratuitous pass is to be put within the same category is a matter on which the authorities are in conflict. Some courts hold that the same grounds of public policy prohibit such a limitation as well in the one case as in the other. *Jacobus* v. *St. Paul, etc. R. R. Co.*, 20 Minn. 125. The better view, however, would seem to be that such a limitation is lawful. Clearly he is in no way at the mercy of the carrier in being forced to give up his common law rights, for he may, of course, pay his fare and retain such rights. Likewise it is evident that his being carried free is a sufficient consideration for the surrender of his right that the carrier be not negligent. Nor can it be said that this is likely to increase the recklessness of the carrier generally, and so has a tendency to injure other members of the public, for by the practice of issuing passes the carrier loses rather than gains, and it is probable, therefore, that free passes will be granted in only a very limited number of cases. Consequently there is no sound reason why public policy should